Central Administrative Tribunal
Principal Bench: New Delhi

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O.A. No. 95/95
O.A. No. 96/95
O.A. No. 98/95

New Delhi this the Ist day of November 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

OA No. 95/95

Smt. Rita Banerjee
W/o Dr. B.D. Banerjee
R/o 503/II, Kirti Apartments,
Mayur Vihar,
Delhi-110092

...Applicant

Versus

1. The Union of India
through the Secretary
Department of Science & Technology
New Mehrauli Road-110016.

2. The Union Public Service Commission
through the Secretary
Union Public Service Commission
Shahzahan Road, New Delhi.

...Respondents

OA No. 98/95

Dr. Vinod Kumar
S/o Shri D.V. Singh
R/o 102, Nimri Colony,
Delhi-110 052.

...Applicant

Versus

1. The Union of India
through the Secretary
Department of Science & Technology
New Mehrauli Road-110016.

2. The Union Public Service Commission
through the Secretary
Union Public Service Commission
Shahzahan Road, New Delhi.

...Respondents

OA No. 96/95

Shri T.R. Aggarwal
S/o Shri K.N. Aggarwal
R/o 8A-D1B, Janakpuri,
New Delhi.

....Applicant

Versus

1. The Union of India
through the Secretary
Department of Science & Technology
New Mehrauli Road-110016.

2. The Union Public Service Commission
through the Secretary
Union Public Service Commission
Shahzahan Road, New Delhi.

...Respondents

(By Advocate: Shri Sanjay Kumar, counsel for applicants
Shri K.C.D. Gangwani, counsel for respondents)

ORDER (Oral)

By Reddy, J.-

These three cases can be disposed of by a common order as common question of facts and law arise in them.

2. In OA- 95/95 and 98/95 the applicants were initially appointed as Technical Assistants in the Ministry of Science and Technology on 24.3.1982 by way of direct recruitment and were promoted on 15.10.1987 to the post of Junior Analyst. In OA-96/95 the applicant was directly appointed by way of direct recruitment as Junior Analyst in 1988. The next post in heirarchy for promotion is the post of Senior Scientific Officer Grade-II. Under the Recruitment Rules called Department of Science and Technology Group 'A' Gazetted posts (Non-ministerial Scientific and Technical) Rules, 1984 the minimum eligibility by way of promotion is three years' regular service in the post of Junior Analyst. The promotion is by way of selection by the Assessment Board. In each case the Union Public Service Commission shall be

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consulted. The applicants completed the three years of service in 1990 and 1991 and they became eligible for promotion to the post of SSO Grade-II. Meanwhile in 1987 the Rules were amended whereby the consultation with the UPSC has been exempted. The applicants were promoted on ad hoc basis in OA-96/95 and OA-98/95 to the post of SSO Grade-II in 1991, whereas in OA-95/95 the applicant was promoted on 30.6.93. The applicants made representations for their regular promotion since vacancies in the posts of SSO Grade-II were available. In the letter dated 1.8.91 (Annexure A-2) the respondents, however, stated that since the amendment to the Recruitment Rules for the post of SSO Grade-II was under process, the applicant's promotion in OA- 96/95 and OA-98/95 could be taken up only after finalisation of the Recruitment Rules for the said post. However, the applicant in OA-95/95 being on deputation from 1989 to 1993 and repatriated to the department only on 15.6.93, immediately thereafter she was promoted to the post of SSO Grade-II on ad hoc basis. and she was subsequently promoted within one year on 15.7.94 on regular basis. In these circumstances, the applicant in OA No. 95/95, can have no grievance.

3. The grievance of the applicant in OA-96/95 and OA-98/95, however, is that their regular promotion could not be postponed merely on the ground that the rules were under amendment. It is also the

grievance of the applicants that for the years 1991-92 and 1993 an Assessment Board did not even meet for considering their promotion. 13

4. Learned counsel for respondents refutes the contention and submits that in view of the conflict that arose in the rules between the amended rules of 1987 and the Notification dated 1.4.1987 where under the President had made the regulations in exercise of the powers conferred by the proviso to Clause (3) of Article 320 of the Constitution amending the Union Public Service Commission (Exemption from Consultation) Regulations, 1958, as to the ~~to~~ consultation with the UPSC in case of promotions to the posts of Senior Scientific Officer Grade-II in the Ministry of Science and Technology and in view of the decision taken to amend the 1987 (amended rules) respondents could not make regular promotions. Subsequently in 1993 a Notification has been issued on 27.1.93 whereby the rules of 1994 have been further amended and as per the amended rules the regular promotions have been made. Accordingly the applicants have been promoted. It is, therefore, contended that the action of the respondents cannot be faulted.

5. A preliminary objection is also taken by the counsel for the respondents that the OA is barred by limitation.

6. Taking the second contention as to the limitation; it is the contention of the learned counsel for the respondents that in the letter dated 1.8.91 (Annexure A-2) it was informed to the

applicants that the promotions could not be made in view of the amendments to the Recruitment Rules being under process. The applicants should have questioned the order immediately thereafter and that the delay of the 4 years thereafter is wholly unexplained.

7. We do not agree. Since it was stated that the rules were under the process of amendment, the applicants were justifiably awaiting the said amendment. The impugned order was passed in 1994 immediately thereafter they questioned the said order within the period of limitation. The contention, therefore, is rejected.

8. Since OA-95/95 is concerned, the applicant was under deputation for four years from 1989 to 1993 and immediately thereafter she was promoted on 30.6.93 on ad hoc basis and in 1994 as she was promoted on regular basis the applicant can have no grievance. It was not shown that the applicant had made any representation and that she was aggrieved by that order. OA- 95/95 is, therefore, liable to be dismissed.

9. It is not in dispute that the applicant in OA-96/95 and OA-98/95 were eligible by 1990 having completed three years of regular service in the grade of Junior Analyst. The grievance of the applicants is that they should have been promoted on regular basis in 1991 itself. As stated supra in the rules of 1984 the consultation with the UPSC was a requirement for the purpose of making regular promotions. The 1987 rules which were introduced by way of amendment have

exempted the consultation with the UPSC. Thus when the applicants became eligible in 1990 as per the rules, it was not incumbant upon the department to consult with the UPSC for the purpose of promotion to the post of SSO Grade-II. However, in the Notification dated 1.4.1987 the President has issued an amendment to the regulations viz; Union Public Service Commission (Exemption from Consultation) Regulations, 1958 Amendment Regulations, 1987, after entry 19(E), Regulations 19(F) was inserted:-

> "19(F) Scientific posts in the Ministry of Science and Technology, Department of Ocean Development, Department of Non-Conventional Energy Sources and the Department of Environment, Forests and Wild Life as specified in the Annexure annexed to these regulations except in respect of appointments to be made thereto by promotion through the Departmental Promotion Committee".

10. A perusal of Regulation 19(F) makes it clear that the consultation with the UPSC will not be necessary except in cases of promotion to Scientific Posts in the Ministry of Science and Technology, Department of Ocean Development, etc. by the D.P.C. Thus by virtue of this regulation it was required of the respondents to consult with the UPSC for promotion to the post of SSO Grade-II. The 1987 rules were amended under Article -309 of the Constitution and the regulations were made under Article-320 of the Constitution. In view of this conflict, as it was stated in the counter affidavit, the respondents had tried to resolve the same by resorting to amendment of the Recruitment Rules. This process appears to have taken considerable time. This is also evident from

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the letter dated 1.8.91 (Annexure A-2) where it was stated that the promotions could not be made on regular basis because the amendment of the rules was under process. Ultimately the rules were amended in 1993 whereby the Chairman/Member of UPSC was shown as one of the Members of the DPC. Thereafter the respondents passed the impugned order promoting them on regular basis. In view of the above factual matrix it cannot be said that the respondents had deliberately delayed the appointment of the applicants The contention that the the Assessment Board or DPC did not meet for the years 1991-92 and 1993 also could be explained in view of the above stated reasons. Learned counsel for applicant relies upon 1977 (2) SLR 656. The petitioner in the said case was ignored for promotion because of mistake committed by the Government and thereafter notional promotion was given with retrospective effect without financial benefits. The court held that the petitioner could not be penalised for no fault of his as he could not be said to have forfeited his claim for arrears of salary. This case, in our view has no relevance to the facts of the present case. Here is a case of conflicting rules both of which are equally valid and the rules had to be amended for resolving the conflict. We do not propose to discuss other two cases cited by the learned counsel for the applicant since the right of the applicants for consideration of promotion from the date of initial appointment on adhoc basis, is not a matter which has to be decided in this case.

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11. Learned counsel also relies upon Annexure A-6 an Office Memo issued by the Department of Personnel and Training where it was stated that the pendency of the amendment of the rules cannot be a ground for not giving regular promotion. Normally it is true that the mere fact of proposed amendment of the rules could not be a ground for stalling of the promotions to be made on regular basis in the present case as we have stated earlier. But in view of the facts stated supra, the applicants cannot make any grievance against the impugned order.

12. We do not find any infirmity in the impugned order as the impugned orders are passed in accordance with the Recruitment Rules. The OAs, therefore fail and are accordingly dismissed.

(Mrs. Shanta Shastry)
Member (A)

(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.